ORIGINAL (3)

Supreme Court, U.S.
FILED
MAY 5 - 2009
OFFICE OF THE CLERK

NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent Kobeay Quran Swafford, respectfully requests, pursuant to the Supreme Court rules, for leave to proceed *in forma pauperis* so that he may, through his state appointed counsel, file his Brief in Opposition to the State's Petition for Writ of Certiorari.

Respondent has been found by the state trial court to be indigent for purposes of state appellate proceedings, and the undersigned was court-appointed as counsel on behalf of Respondent during state appellate court proceedings. At the time of state court proceedings, Respondent was incarcerated. Subsequent to the Michigan Supreme Court decision, Respondent was released from prison and his current whereabouts is not known.

WHEREFORE, for the foregoing reasons, Defendant requests this Honorable Court grant this motion.

Respectfully submitted,

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Dated: May 5, 2009

NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

CRAIG A. DALY, P.C., being duly sworn, deposes and says, that the following is true to the best of his knowledge, information, and belief:

1. That Respondent, KOBEAY QURAN SWAFFORD, was found by the state court's to be indigent for purposes of state court appellate proceedings.

2. That the undersigned was appointed to represent Respondent in the state court appellate proceedings. That during his representation Respondent was incarcerated.

3. Respondent was released from prison upon the Michigan Supreme Court's decision and his whereabouts is currently unknown.

FURTHER DEPONENT SAYETH NOT.

CRAIG A. DALY, P.C. (P27539)

Subscribed and sworn to before me
this 5th day of May, 2009.

Melinda D. Zawal

Melinda D. Zawal, Notary Public
State of Michigan, County of Macomb
My Commission Expires 6/18/2010
Acting in the County of Wayne

NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

QUESTIONS PRESENTED ii

LIST OF PARTIES ii

OPINIONS BELOW ii

JURISDICTION iii

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED iii

COUNTER-STATEMENT OF THE CASE 1

REASONS FOR NOT GRANTING THE WRIT 6

ARGUMENT 7

I. SINCE IT IS UNDISPUTED THAT PETITIONER LODGED THEIR DETAINER AGAINST RESPONDENT AT THE FEDERAL INSTITUTION WHERE RESPONDENT WAS SERVING A TERM OF IMPRISONMENT, AND BOTH PETITIONER AND RESPONDENT INVOKED ITS TERMS, THE INTERSTATE AGREEMENT ON DETAINERS (IAD) CLEARLY APPLIED AND PETITIONER ADMITTED FAILURE TO BRING RESPONDENT TO TRIAL WITHIN 180 DAYS REQUIRED DISMISSAL 7

II. THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THE MICHIGAN SUPREME COURT DECISION BECAUSE THE TRIAL COURT LACKED JURISDICTION TO PROCEED TO TRIAL UNDER STATE COURT RULES AND THE DOCTRINE OF ESTOPPEL APPLIES GIVEN PETITIONER'S AGREEMENT TO BE BOUND BY THE IAD IN THIS CASE 15

CONCLUSION 17

INDEX TO APPENDICES

EXHIBIT A Detainer from Wayne County Prosecutor's Office, dated June 1, 2004 to U.S. Marshals, State of Tennessee 1a

EXHIBIT B — Inmate Request to Staff from Kobeay Swafford to Mr. Trainum, dated October 6, 2006 requesting an explanation of "document verified and dated March 2, 2005" 2a

EXHIBIT C — Record Authentication, Certification of Clerk of the Court, dated March 3, 2005 ..... 3a

EXHIBIT D — Notice of Untried Indictment, dated March 2, 2005 ..... 4a

EXHIBIT E — Letter from Federal Bureau of Prisons to Wayne County Prosecutor regarding disposition of the outstanding charges filed as a detainer, dated March 2, 2005 ..... 5a-6a

EXHIBIT F — Detainer Action Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated March 2, 2005 ..... 7a

F-1 IAD - Offer to Delivery Temporary Custody, dated March 2, 2005 ..... 8a

F-2 IAD - Place of Imprisonment, dated March 2, 2005 ..... 9a

EXHIBIT G — U.S. Mail Domestic Return Receipt from Wayne County Prosecutor's Office and Clerk of the Court, dated March 7, 2005 ..... 10a

EXHIBIT H — Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated June 4, 2005 ..... 11a

EXHIBIT I — IAD - Prosecutor's Certification, dated June 15, 2005 ..... 12a

I-1 Evidence of Agent's Authority to Act for Receiving State, Form VI, dated June 15, 2005 ..... 13a

I-2 Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer, Form VII, dated June 15, 2005 ..... 14a

Page

EXHIBIT J — Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated September 16, 2005 ..... 15a

EXHIBIT K — Federal Bureau of Prisons, Release Authorization dated October 5, 2005 ..... 16a

TABLE OF AUTHORITIES CITED

Page

FEDERAL CASES

Alabama v Bozeman, 533 US 146, 121 S Ct 2079,
150 L Ed 2d 188 (2001) 10

Carchman v Nash, 473 US 716, 105 S Ct 3401,
7 L Ed 2d 516 (1985) 12, 13

Fay v Noia, 372 US 391, 83 S Ct 822, 9 L Ed 2d 837 (1963) 17

Fex v Michigan, 507 US 43, 113 S Ct 1085,
122 L Ed 2d 406 (1993) 9, 10, 12

United States v Dixon, 592 F2d 329 (6th Cir, 1979) 10

United States v Mauro, 436 US 340, 98 S Ct 1834,
56 L Ed 2d 329 (1978) 9, 12, 13

STATE CASES

Headrick v State, 816 So 2d 517 (Ala. Crim. App., 2001) 13

State v Hargrove, 45 P3d 376 (Kan, 2002) 14

State v Herrick, 686 A2d 602 (ME, 1996) 13

MISCELLANEOUS

Article III 2, 5, 9, 11, 16
Article IV(a) 13
Article V(b) and (c) 4, 11
Article IX 10

Rule 10 ..... 6, 13
Rule 15(2) 1

QUESTIONS PRESENTED

I. SINCE IT IS UNDISPUTED THAT PETITIONER LODGED THEIR DETAINER AGAINST RESPONDENT AT THE FEDERAL INSTITUTION WHERE RESPONDENT WAS SERVING A TERM OF IMPRISONMENT, AND BOTH PETITIONER AND RESPONDENT INVOKED ITS TERMS, DID THE INTERSTATE AGREEMENT ON DETAINERS (IAD) CLEARLY APPLY AND THE PETITIONER ADMITTED FAILURE TO BRING RESPONDENT TO TRIAL WITHIN 180 DAYS REQUIRED DISMISSAL?

II. ARE THERE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THE MICHIGAN SUPREME COURT DECISION BECAUSE THE TRIAL COURT LACKED JURISDICTION TO PROCEED TO TRIAL UNDER STATE COURT RULES AND THE DOCTRINE OF ESTOPPEL APPLIES GIVEN PETITIONER'S AGREEMENT TO BE BOUND BY THE IAD IN THIS CASE?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

OPINIONS BELOW

Respondent accepts Petitioner's Opinions sets forth in their Petition for Writ of Certiorari.

JURISDICTION

Respondent accepts Petitioner's Jurisdiction statement in their Petition for Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

COUNTER-STATEMENT OF THE CASE

Respondent, KOBEAY QURAN SWAFFORD, sets forth the following facts to address the misstatement or omissions of facts by Petitioner relevant to the case, pursuant to Rule 15(2) of the Rules of the Supreme Court of the United States:

On June 1, 2004, the Petitioner (Wayne County Prosecutor's Office, representing the State of Michigan) sent a written detainer to the United States Marshals in Tennessee against Respondent Swafford (Respondent's Appendix, Exhibit A). In relevant part, the document states:

Please enter the attached documents (Complaint and Warrant) as a detainer against this defendant (emphasis added).

Petitioner's contention that the detainer was a "hold" is disingenuous given the explicit language used by Petitioner. Furthermore, the Michigan Supreme Court made a factual finding that this document is "a written detainer" (Petitioner's Appendix C, pg. 24A).

After Respondent's federal sentence, the detainer sent to the United States Marshal was forwarded to the Federal Correctional Institution (FCI) at Beckley, West Virginia (hereinafter referred to as FCI) where Respondent was incarcerated (Petitioner's Appendix B, pg. 6A).

On March 2, 2005, Scott Trainum, the Legal Instruments Examiner at the FCI at Beckley had possession of Petitioner's written detainer of June 1,

2004. He telephoned Robert Purdue of the Wayne County Prosecutor's Office and verified the request to lodge the detainer against Respondent (Petitioner's Appendix C, pg. 25A; Respondent's Appendix B). Petitioner then caused the Clerk of the Court to forward certified copies of the state Warrant and Complaint to be sent to the federal institution (Petitioner's Appendix B, pg. 21A; Respondent's Appendix, Exhibits A and C). Contrary to Petitioner's assertion, Petitioner did cause the filing of the state warrant and complaint for murder with the FCI on March 3, 2005 and verified their detainer with the FCI.

At no time did Petitioner ever lift or withdraw their detainer.

On March 2, 2005, Respondent was notified of the State detainer by way of a Notice of Untried Indictment and made a signed request to the Federal Bureau of Prisons for disposition of the outstanding charges in Michigan under Article III of the IAD (Respondent's Appendix, Exhibit D).

On March 2, 2005, the Federal Bureau of Prisons sent notice to the Wayne County Prosecutor that Respondent was seeking disposition of the outstanding charges of First Degree Murder and disposition in accordance with Article III of the Interstate Agreement on Detainees (IAD) Act which required that Respondent be brought to trial within 180 days of the receipt of the request (Respondent's Appendix, Exhibit E). In relevant part, this notice states: "**The above named Respondent is requesting disposition on**

the outstanding charges you have filed against him as a detainer . . . For: 1st Degree Murder" (emphasis added). Along with this request, the Federal Bureau of Prisons sent to the Wayne County Prosecutor the appropriate notices and forms, including the Detainer Action Letter, IAD - Offer to Delivery Temporary Custody, IAD - Placement of Imprisonment and Notice of Untried Indictment (Respondent's Appendix, Exhibits F, F-1, F-2). The Detainer Action Letter, dated March 2, 2005 addressed to the Wayne County Prosecuting Attorney, clearly states that the reference is regarding "Lodging of Detainer" for inmate "Swafford, Kobeay" and states: "**XXX A detainer has been filed against this subject in your favor for: 1st Degree Murder**" (emphasis in original) (Respondent's Appendix, Exhibit F).

It is undisputed, the Wayne County Prosecutor and Clerk's Office received the above documents on March 7, 2005 by certified mail (Respondent's Appendix, Exhibit G; Petitioner's Appendix C, pg. 25A).

On June 4, 2005, the Federal Bureau of Prisons notified the Wayne County Prosecutor that (1) Respondent had requested disposition of the outstanding charges, (2) the necessary forms under the IAD were sent via certified mail, return receipt on March 2, 2005, (3) that the forms were received by the Wayne County Prosecutor on March 7, 2005 and that the completed forms had not been received. The Wayne County Prosecutor was notified:

> As you know, once an inmate requests disposition under the IAD they must be brought to trial within 180 days of your receipt of the request. Ninety of the allowed 180 days elapsed effective June 25, 2005.

(Respondent's Appendix, Exhibit H).

It is undisputed that on June 15, 2005, Assistant Wayne County Prosecutor, Kellie Gleason, executed the "Agreement on Detainers" forms sent by the Federal Bureau of Prisons (Prosecutor's Certification, Evidence of Agent's Authority to Act for Receiving State, Prosecutor's Acceptance of Temporary Custody and Request for Disposition of Detainee) and returned them to the federal institution, thus invoking the IAD (Respondent's Appendix, Exhibits I, I-1, I-2; Petitioner's Appendix C, pg. 25A), thus invoking the IAD.

In relevant part, the prosecutor certified to abide by certain terms of custody of Respondent "in connection with request for custody" (Respondent's Appendix, Exhibit I). Form VI, entitled "Agreement on Detainers" is an IAD form executed on June 15, 2005 wherein the Wayne County Prosecutor, Extradition Unit, agreed to take custody of the Respondent in accordance with Article V(b) of the IAD (Respondent's Appendix, Exhibit I-1). Form VII of the Agreement on Detainers, also executed by Assistant Wayne County Prosecutor, Kellie Gleason, and Wayne County Circuit Judge, Timothy Kenny, provides that the prosecutor's office would accept custody of Respondent and bring him to trial "within the time

specified in Article III(a) of the "Agreement on Detainers" (Respondent's Appendix, Exhibit I-2).

Therefore, it is undisputed that Petitioner invoked the IAD and agreed to its terms (Petitioner's Appendix C, pg. 38A). As such, they are estopped from seeking to avoid its application.

On September 16, 2005, the Federal Bureau of Prisons notified the Wayne County Prosecutor that 180 days under the IAD had expired and that Respondent Swafford could petition the court for dismissal of the outstanding charges (Respondent's Appendix, Exhibit J).

On October 5, 2005, the Detroit Police Department took custody of Respondent Swafford from FCI at Beckley pursuant to the IAD and the detainer filed by the Wayne County Prosecutor (Respondent's Appendix, Exhibit K). The method on the form indicates "IAD" and the box for Detainer is marked "yes" (*Id.*; Respondent's Appendix, Exhibit K; Petitioner's Appendix B, pg. 8A; Petitioner's Appendix C, pg. 40A).

Once again, it is undisputed that Petitioner took possession of Respondent, albeit after the 180 day period, pursuant to the IAD.

After the Michigan Court of Appeals reversed the trial court's ruling dismissing the case for violation of the IAD, Respondent filed a timely application for leave to appeal in the Michigan Supreme Court (Petitioner's Appendix C, pg. 27-28A). This constituted an automatic stay of the Court of

Appeal's reversal and the Michigan Supreme Court ruled that ". . . the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant" (Petitioner's Appendix C, pg. 28-29A). Therefore, contrary to Petitioner's assertion that the filing of the application in the Michigan Supreme Court is simply "problematic, but not relevant . . ." (Petition, pg. 9, fn. 2) there exists an adequate and independent jurisdictional state ground for the Michigan Supreme Court's ruling reversing Respondent's conviction.

Since the Michigan Supreme Court's decision does not meet the grounds for granting the Petition (Rule 10 of the Supreme Court of the United States) and there is state jurisdictional ground, as well as application of the doctrine of estoppel, which supports the Michigan Supreme Court's reversal of Respondent's conviction, the Petition for Writ of Certiorari should be denied.

REASONS FOR NOT GRANTING THE WRIT

The Michigan Supreme Court's decision does not meet the grounds for granting the Petition (Rule 10 of the Supreme Court of the United States) and there is state jurisdictional ground, as well as application of the doctrine of estoppel, which supports the Michigan Supreme Court's reversal of Respondent's conviction, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. SINCE IT IS UNDISPUTED THAT PETITIONER LODGED THEIR DETAINER AGAINST RESPONDENT AT THE FEDERAL INSTITUTION WHERE RESPONDENT WAS SERVING A TERM OF IMPRISONMENT, AND BOTH PETITIONER AND RESPONDENT INVOKED ITS TERMS, THE INTERSTATE AGREEMENT ON DETAINERS (IAD) CLEARLY APPLIED AND PETITIONER'S ADMITTED FAILURE TO BRING RESPONDENT TO TRIAL WITHIN 180 DAYS REQUIRED DISMISSAL.

Petitioner asserts that the detainer they filed, misrepresented in the Petition as a "hold,"[1] was only directly sent by them to the U.S. Marshal's while Respondent was a pretrial detainee, and therefore it did not constitute a detainer under the IAD. Petitioner fails and refuses to acknowledge that they subsequently lodged their detainer with the FCI where Respondent was serving his federal sentence by verifying the existence of their detainer, causing their complaint and warrant to be filed with the FCI and then invoking the terms of the IAD. Assuming the detainer they sent to the U.S. Marshals was simply a detainer, Petitioner (and Respondent through his request) clearly converted it to IAD detainer after Respondent entered upon his term of imprisonment. Therefore, the clear and plain language of the IAD applies to this case.

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[1]As noted, Petitioner's document itself specifically refers to it as a detainer. The Michigan Supreme Court (as well as the trial and Michigan Court of Appeals) found it to be a detainer.

Petitioner also argues that the Michigan Supreme Court failed to address whether Petitioner's detainer was an IAD detainer, and that its decision in this case is contrary to authority from this Court and other jurisdictions. That claim is equally unsupported and a review of the Michigan Supreme Court decision clearly refutes this argument.

Ironically, Petitioner also attempts to spread the blame for their negligence in failing to bring Respondent to trial within 180 days, when the undisputed facts show that they explicitly and in writing invoked the terms of the IAD and are responsible, alone, for the ultimate outcome.

Finally, because Respondent was tried without jurisdiction under state court rules and Petitioner is estopped from seeking application of the IAD once they invoked it, there is an independent and adequate state basis for reversal of Respondent's conviction. This Court should deny the Petition.

A. THE INTERSTATE AGREEMENT ON DETAINERS (IAD).

Nothing in the language of the IAD requires that Petitioner file their detainer directly with the institution where Respondent was serving his federal sentence in order for it to be a valid IAD detainer. As the Michigan Supreme Court correctly concluded, a valid detainer for purposes of the IAD exists if that detainer is lodged against the prisoner during the term of his imprisonment.

> [t]here is no requirement in the IAD that the prosecutor initially file the detainer with the institution in which the prisoner is serving his sentence. Article III(a) simply states that it is applicable where "a detainer has been lodged against the prisoner." MCL 780.601. There is no language in the IAD that requires the prosecutor to initially lodge the detainer with any specific institution. (Petitioner's Appendix C, pg. 36A).

This Court has never reached a contrary position. As noted, the Act applies once a "detainer" has been lodged against an inmate. There is no definition of "detainer" in the Act. Generally, although there are no exact parameters for defining a "detainer," it is recognized that notification filed with the institution where the defendant is serving his sentence, advising that he is wanted in another jurisdiction to face pending charges, constitutes a detainer. United States v Mauro, 436 US 340, 359, 98 S Ct 1834, 56 L Ed 2d 329 (1978) (A detainer is "a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction.") The purpose of the detainer is that it "... serves to notify the custodial state to hold the prisoner or inform the notifying state prior to the prisoner's release," *id.* (emphasis added). In Fex v Michigan, 507 US 43, 44, 113 S Ct 1085, 122 L Ed 2d 406 (1993) this Court defined a "detainer" as "... a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency ..."

Because the issuance of a detainer is an informal process, it may be lodged by any person who has the authority to do so. United States v Dixon, 592 F2d 329, 332, fn 3 (6th Cir, 1979). In the state court proceedings, Petitioner conceded as much. "As such, detainers may be filed by the prosecutor, the police, or the sheriff . . ." (Petitioner's Supplemental Brief in Court of Appeals, pg. 15). Once the inmate has invoked his rights under the Act, the 180-day period begins to run once the inmate's notice is received by the officials prosecuting the pending charges. Fex v Michigan, supra.

The IAD facilitates the transfer of prisoners "to the receiving state for trial prior to the termination of his sentence . . ." Alabama v Bozeman, 533 US 146, 148, 121 S Ct 2079, 150 L Ed 2d 188 (2001). Article IX of the IAD mandates that the Act "be liberally construed so as to effectuate its purposes." MCL 780.601. This means the courts should liberally construe the Act in favor of the prisoner it was intended to benefit.

B. APPLICATION.

The relevant case history shows that (1) a detainer was initially lodged with the FCI at Beckley, West Virginia upon the Respondent's arrival; (2) that on March 2, 2005 the Wayne County Prosecutor's Office confirmed their request to lodge a detainer with the FCI where Respondent Swafford was under sentence and caused the clerk of the court to send their Complaint and Warrant to the FCI, (3) Respondent Swafford made the proper request under the IAD, (4) notifications of Respondent's request were sent to the

Wayne County Prosecutor from the FCI, and were received on March 7, 2007 by the prosecutor's office and Clerk of the Court, (5) the FCI expressly acknowledged the lodging of the detainer, (6) that the Wayne County Prosecutor clearly invoked the Act by signing the Agreement on Detainers, (7) more than 180 days lapsed without any action by the Wayne County Prosecutor's Office to bring Respondent Swafford to trial within the time limitation, and (8) the Wayne County Prosecutor's Office ultimately took possession on Respondent under the IAD, albeit after the time limitation imposed under the IAD.

The Michigan Supreme Court, in its unanimous opinion, succinctly found application of the IAD in this case.

> In this case, the Wayne County Prosecutor lodged a detainer against defendant, and while defendant was serving a term of imprisonment at a federal institution, defendant made a written request with the prosecutor for a final disposition of the pending Michigan charges. Thereafter, the prosecutor failed to bring defendant to trial within 180 days as is required by Article III(a) of the IAD. Article V(c) of the IAD, MCL 780.601, states that if a trial is not brought within the period provided in Article III(a), "the . . . court . . . shall enter an order dismissing the [complaint] with prejudice . . ." (Emphasis added.) Therefore, the trial court in this case properly dismissed the charges with prejudice. (Petitioner Appendix C, pg. 31A).

* * * *

IV. CONCLUSION

> The clear language of the IAD, MCL 780.601, states that if the prosecutor fails to bring a defendant to trial within 180 days of receiving the defendant's request for a final disposition made

> while the defendant is serving a term of imprisonment if a "detainer has been lodged against the prisoner," the court "shall enter an order dismissing the [complaint] with prejudice." Because that is precisely what happened in this case, we reverse the Court of Appeals and reinstate the trial court's order dismissing the charges with prejudice. (Petitioner Appendix C, 41A).

C. PETITIONER'S CLAIMS.

The essence of Petitioner's argument is to freeze in time their initial act of sending the detainer to the U.S. Marshal's and turn a blind eye to everything that happened after words, especially to their own acts. To the extent that Petitioner relies on this Court's decision in Fex, Mauro and Carchman v Nash, 473 US 716, 105 S Ct 3401, 7 L Ed 2d 516 (1985), those cases do not address the precise issue in this case (Fex, 180 day period only commences when prisoner's request for disposition has been actually delivered to the court and prosecutor that lodged the detainer; Mauro, writs of habeas corpus *ad prosequendum* is not a detainer within the meaning of the agreement; Charchman, Art. III does not apply to detainers based on probation violation charges because they are not an indictment, information or complaint based on a criminal offenses).

In addition, since the undisputed record establishes that the detainer in this case was lodged when Respondent was first incarcerated at the FCI and subsequently on March 2, 2005, the other state court decisions cited by

Petitioner are not in opposition to the Michigan Supreme Court decision in the instant case.

Nothing in the IAD suggests that the detainer must have been lodged while the defendant was imprisoned before the IAD applies". Instead, the plain language of the IAD provides first, that "[w]henever a person has entered upon a term of imprisonment and secondly," "whenever during . . . the term of imprisonment there is a pending" charge "of which a detainer has been lodged," the Act applies. The triggering factors are, (1) the incarceration of the person serving a prison sentence, (2) an untried pending charge, and (3) the existence of a detainer that has been lodged against the person. Art. III(a).

The other state cases cited by Petitioner are not in opposite to this analysis applied by the Michigan Supreme Court. Headrick v State, 816 So 2d 517, 524 (Ala. Crim. App., 2001)[2] ("... a person incarcerated in a local jail or holding facility pending imminent transfer to a federal prison is (not) in an 'institution' within the meaning of Mauro and Carchman definition of a detainer and Article IV(a) of the IAD" and "... a detainer was never lodged against Headrick while he was temporarily housed in the Etovah County Jail. . ."); State v Herrick, 686 A2d 602, 604 (ME, 1996) ("once an effective

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[2]Headrick is a decision by the Court of Criminal Appeal in Alabama and therefore is not a state court of last resort as required by Rule 10 of the Rules of this Court.

detainer was lodged against Herrick (while he was serving a prison sentence) and he invoked his rights under the IAD, he was brought to trial within 180 days"); State v Hargrove, 45 P3d 376, 383 (Kan, 2002) ("The hold or detainer requested against a pretrial detainer remains effective, it just does not trigger the Agreement at that time.") (emphasis added).

Finally, Petitioner asserts that others are responsible for their malfeasance and the outcome. The claim that the Marshal should not have lodged the detainer by forwarding it to the Bureau of Prisons flies in the face of common sense. Petitioner never lifted the detainer. Of course, they wanted Respondent returned to Michigan to stand trial on the murder charges and not release. One could only imagine the finger pointing and fallout had the Marshal's not forwarded the detainer and Respondent had been released after serving his federal sentence, especially if he committed another crime, upon his release. Law enforcement agencies routinely honor detainers which, in effect, attach to the prisoner and continue with him at every facility he is housed at until such time as the requesting agency "lifts" or removes it.

Since the FCI had the actual detainer in their possession, Petitioner verified their detainer and caused their complaint and warrant to be sent to the FCI, it makes no sense whatsoever, to "file" the detainer once again at

the FCI as Petitioner suggests. Finally, having clearly invoked the Act, Petitioner is now estopped from claiming that the Act does not apply.

In summary, the plain language of the Act and common sense dictates the result reached by the Michigan Supreme Court.

II. THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THE MICHIGAN SUPREME COURT DECISION BECAUSE THE TRIAL COURT LACKED JURISDICTION TO PROCEED TO TRIAL UNDER STATE COURT RULES AND THE DOCTRINE OF ESTOPPEL APPLIES GIVEN PETITIONER'S AGREEMENT TO BE BOUND BY THE IAD IN THIS CASE.

The trial court dismissed the charges on January 26, 2006 for violation of the IAD. On March 27, 2007, the Court of Appeals reversed and remanded (Petitioner's Appendix A).

On May 14, 2007, Respondent filed a timely pro per application for leave to appeal. MCR 7.215(F)(1)(a) provides in relevant part:

> The Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court. (Emphasis added).

In the meantime, the trial court proceeded to a jury trial and Respondent was convicted on September 12, 2007. However, the Court of Appeal's opinion was never legally effective, and ultimately the Michigan Supreme Court reversed the Court of Appeals on September 21, 2007. Thus, at the time of Respondent's jury trial, the only valid order was the trial court's dismissal with prejudice and having dismissed the case, there was no

jurisdiction to proceed to trial. The Michigan Supreme Court explicitly found,

> Accordingly, the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant (Petitioner's Appendix C, pg. 25A).[3]

In addition, the Michigan Supreme Court found that Petitioner invoked the IAD.

> Finally, the facts of this case make it clear that both parties invoked the IAD for purposes of bringing defendant to trial (Petitioner's Appendix C, pg. 38A).

The Michigan Supreme Court summarized their factual findings as follows:

> In this case, it is utterly clear that the prosecutor lodged a detainer against defendant, that both the Bureau of Prisons and defendant were aware of this detainer, that the prosecutor was aware that the Bureau of Prisons was in possession of the detainer, and that defendant caused a written request for a final disposition to be delivered to the prosecutor and the court while defendant was serving a term of imprisonment. Therefore, the IAD is clearly applicable, and Article III(A) was indisputably violated when defendant was not brought to trial within the proper time frame. (Petitioner's Appendix C, pg. 40-41a).

Since Petitioner invoked the IAD and agreed to its terms and conditions, they are estopped from seeking to avoid its application.

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[3]During oral argument several sections of the Michigan Supreme Court expressed doubt whether Petitioner could ever be tried again without violating his double jeopardy protections.

Given an adequate and independent state ground for the Michigan Supreme Court's reversal of Respondent's conviction, this Court lacks jurisdiction to grant review on a federal question, as it is moot and the Court does not issue advisory opinions. See Fay v Noia, 372 US 391, 340, 83 S Ct 822, 9 L Ed 2d 837 (1963).

CONCLUSION

The Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

CRAIG A. DALY, P.C. (P27539)
Attorney for Petitioner-Appellant
28 W. Adams, Suite 900
Detroit, Michigan 48226
(313) 963-1455

Dated: May 5, 2009

NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

APPENDIX

CRAIG A. DALY, P.C. (P27539)
Court-Appointed Counsel for Respondent
28 W. Adams, Suite 900
Detroit, Michigan 48226
(313) 963-1455

Exhibit A

Detainer from Wayne Prosecutor to U.S. Marshal,
State of Tennessee, dated June 4, 2008

[illegible]
[illegible]

[illegible]

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING
ATTORNEY
DETROIT, MICHIGAN

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

June 1, 2004

U.S. MARSHALL
STATE OF TENNESSEE

Re: KOREAY Q. SWAYBORN Dob: 9-7-74 Case No. 04-5809[illegible]

Greetings:

Please enter the attached documents as a detainer against this defendant.

If you have any further questions, please let me know.

Sincerely yours,

ROBERT J. PURUP
Paralegal, Extradition Unit
313.224.8886-p/ 313.224.8224-f

Verified with Robert Purdue
Date: 3-2-05 Time: 8:57
By: SD
Telephone # (313) 224-8886
Assignment ordered and on the way.
3-2-05

BEST AVAILABLE COPY

Exhibit B

Inmate Request to Staff from K. Swafford dated October 6, 2006 requesting explanation of document, dated March 2, 2005

BP-S148.055 **INMATE REQUEST TO STAFF** CDFRM
SEP 98
U.S. DEPARTMENT OF JUSTI[redacted] **FE[redacted]AL BUREAU OF PRISONS**

(r. d/p)

TO: (Name and Title of Staff Member) Mr Trainum (LIE) [redacted]	DATE: 10-6-06
FROM: Kobeay Swafford	REGISTER NO.: 16706-075
WORK ASSIGNMENT: HLHC	UNIT: Pop BL

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Dear Mr Trainum:

Attached please find a copy of a document you "verified" and dated 3-2-05. This document relates to a detainer request and implicates the IAD. Please meet with me for the purpose of ascertaining what exactly was verified by you on 3-2-05. Also you indicate on the attached document that "originals ordered and on the way". Please indicate whether said "originals" were sent. If so, please provide me copies of same. I thank you in advance for scheduling an appointment with me. Alternatively, Please send me a letter explaining the attached document

(Do not write below this line)

DISPOSITION:

I [illegible] the [illegible] to lodge a detainer [illegible] policy. Register originally [illegible] policy was [illegible] original [illegible] necessary as the request was [illegible].

Signature Staff Member	Date
[illegible]	10-10-06

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94

Exhibit C

Record Authentication, Certification of Clerk of the Court, dated March 3, 2005

STATE OF MICHIGAN 36TH DISTRICT COURT	RECORD AUTHENTICATION CERTIFICATION OF CLERK OF THE COURT	CASE NO. 04-58995-01

421 Madison Ave. Detroit, MI 48226 (313)965-5033

Court address Court telephone no

Plaintiff name(s), address(es) and telephone no(s).

36TH District Court

Plaintiff attorney, bar no., address and telephone no.

v

Defendant name(s), address(es) and telephone no(s).

KOBEAY QURAN SWAFFORD

6106 EPWORTH

DETROIT, MI

I, Ms. Karen Y. Travis: Director, Criminal/Traffic Divisions Clerk of the District Court, certify that:

1. I am the custodian of the records of this court.
2. I have compared the annexed copies of 36-04-58995-01

from the above case with the originals on file and of record in this court, and I find the copies to be true copies of the whole of such originals.

MARCH 3, 2005

Date

Ms. Karen Y. Travis: Director
Criminal/Traffic Divisions

Clerk

By: Deputy Court Clerk

Exhibit D

IAD-Notice of Untried Indictment,
dated Mar. 2, 2005

BP-S235.051 IAD - NOTICE OF UNTRIED INDICTMENT CDFRM
FEB 96
U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

Inmate: Swafford, Kobeay Register No. 16706-075 Institution: FCI Beckley

Pursuant to the Interstate Agreement on Detainers Act, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contents of each.

Pending charges: 1st Degree Murder

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceedings contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainer and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify the Inmate Systems Manager of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Warden to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Warden has not affirmatively consented to or ordered such delivery.

Dated: March 2, 2005

Harley G. Lappin, Director
Federal Bureau of Prisons

By: Mary C. Anderson, Warden

DATE RECEIVED: 5/3/05

Kobeay Swafford
(Inmate's Signature)

***

Exhibit E

Letter from Federal Bureau of Prisons to Wayne County Prosecutor re: disposition of outstanding charges filed as a detainer, dated March 2, 2005

U. S. Department of Justice

Federal Bureau of Prisons

Federal Correctional Institution

P.O. Box 1280
Beaver, WV 25813

March 2, 2005

Kym Worthy, Prosecuting Attorney
Frank Murphy Hall of Justice
1441 Saint Antoine
Detroit MI 48226

RE:
Swafford, Kobeay
Federal reg number 16706-075

Dear Ms. Worthy:

The above named inmate is requesting disposition on the outstanding charges you have filed against him as a detainer. We are enclosing the appropriate forms as required by the Interstate Agreement on Detainers. An inmate requesting disposition of detainers in accordance with Article III of the Interstate Agreement on Detainers Act must be brought to trial within 180 days of your receipt of this request.

For: 1st Degree Murder

Other Pending Charges in Your State: None Known

We request action be taken under Article III of the IADA and IADA Form VI, "Evidence of Agents' Authority to Act for Receiving State" and VII, "Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer" and the completed Prosecutor's Certification be submitted to us, as necessary. The two (2) persons who are the designated agents to return the prisoner to your State must also be the persons whose signatures appear on the Form VI. It would be advisable to designate alternate agents whose signatures must also appear on the IADA Form VI, in the event the primary agents are unable to make the trip. Also be advised that the designated agents must have in their possession proper identification, and a certified copy of the warrant when assuming custody of the prisoner. Any questions regarding this procedure may be directed to the individual listed below or the

Exhibit E

Letter from Federal Bureau of Prisons to Wayne County Prosecutor re: disposition of outstanding charges filed as a detainer, dated March 2, 2005

Agreement Administrator for your State.

Inmates who are temporarily transferred pursuant to the IADA remain under the primary jurisdiction of federal authorities. Should you accept temporary custody of this inmate, we wish to remind you that under Article V(e) of the IADA, you are required to return the above named inmate to this institution after prosecution on all pending charges. While this inmate is in your temporary custody, he shall be held in a suitable jail that meets the level of security required by the Bureau of Prisons. Any problems associated with this inmate must be reported to the individual listed below. This inmate may not be released on bail or bond while in your custody. Additionally, this inmate is not to be committed to a state correctional institution for service of any state sentence(s) that may be imposed as a result of your prosecution.

In order to assist us with processing, please complete the attached Prosecutor's Certification form and return it, along with Forms VI and VII, prior to scheduling a date for assuming custody. We would also ask that you contact us at least three days in advance of pick up so that we may confirm all arrangements and complete the necessary paperwork prior to the inmate's transfer.

In addition, please be advised that you are not to advise the inmate of the date you are planning to assume custody.

Please be assured of our continued cooperation in this matter and if you have any questions please contact me at (304) 252-9758.

Sincerely,

Michael L. Snow
Inmate Systems Manager

Enclosures: BP-Forms 236, 238, 239
BP 565 "Prosecutor's Certification"

cc: Clerk of the Court, Compact Administrator,
J&C File
Central File
Inmate, Richards, Robert A. 06908-088

Exhibit F

Detainer Action Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated March 2, 2005

BP-S394.058 DE ER ACTION LETTER CFRM

FEB 94 DEC 97

U.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU OF PRISONS

Wayne County Prosecuting Attorney Frank Murphy Hall of Justice 1441 Saint Antoine Detroit MI 48226	Federal Corraction Institution Beckley P.O.Box 1280 Beaver, WV 25813
	March 2, 2005

Ref:	Inmate name:	Reg. No.
Lodging of Detainer	Swafford, Kobeay	16706-075 : DOB 09-07-1974

The below checked paragraph relates to the above named inmate:

This inmate may have pending charges in the _____ Will you please investigate this report and advise what disposition, if any, has been made of the case. If subject is wanted by your department and you wish a detainer placed, it will be necessary for you to forward a certified copy of your warrant to us along with a cover letter stating your desire to have it lodged as a detainer, or indicate you have no further interest in subject.

XXX A detainer has been filed against this subject in your favor for: 1st Degree Murder, we will again notify you approximately 60 days prior to actual release. Projected release date is 02-01-2007.

Enclosed is your detainer warrant. Your detainer against the above named has been removed in compliance with your request.

Your detainer warrant has been removed on the basis of the attached . Notify this office immediately if you do not concur with this action.

Your letter dated requests notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is .

I am returning your on the above named inmate who was committed to this institution on to serve for the offense of . If you wish your filed as a detainer, please return it to us with a cover letter stating your desire to have it placed as a hold or indicate you have no further interest in the subject.

The above named inmate has been received at . Your detainer/notification request has been forwarded.

XXX Other:Should you have any questions, please call 304-252-9758.

Sincerely, Scott Trainum, LIS

For: Michael J. Snow,
Inmate Systems Manager

2 Signed Record Copies - 1 Addressee, 1 - Judgment & Commitment File; Copy - Inmate; Copy - Central File (Section 1); Copy - Correctional Services Department

(This form may be reproduced via WP) (Replaces BP-394(58) dtd October 1988)

Exhibit F-1

IAD-Offer to Delivery Temporary Custody,
dated March 2, 2005

BP-S239.051 IAD - OFFE) DELIVERY TEMPC ' ' CUSTODY CDFIN
FEB 94
U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

To: Kym Worthy, Prosecuting Officer Wayne County

And to all other prosecuting officers and courts of jurisdiction listed below from which indictments, information or complaints are pending.

Re: Swafford, Kobeay Register No. 16706-075
(Inmate's name)

Pursuant to the provisions of Article V of the Interstate Agreement on Detainers Act between this state and your state, the undersigned hereby offers to deliver temporary custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is described in the attached inmate's request.

The required Certificate of Inmate Status is enclosed.

If proceedings under Article IV(d) of the Interstate Agreement on Detainers Act are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for purposes of these indictments, informations or complaints.

Offense: 1st Degree Murder.

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible? Kindly acknowledge.

Inst. Federal Correctional Institution
P.O. Box 1280
Beaver, WV 25813

Name/Title Custodial Authority
Harley G. Lappin, Director
Bureau of Prisons

DATE: March 2, 2005

for By: Marty C. Anderson, Warden

Record Copy - State IAD Administrator; Copy - J & C File; Copy - Central File (Section 1); Copy - Prosecuting Official (Mail Certified Return Receipt); Copy - Clerk of Court (Mail Certified Return Receipt)
This form may be replicated via WP) Replaces BP-239(58) October 88)

Exhibit F-2

IAD-Place of Imprisonment,
dated March 2, 2005

BP-S236.051 IAD - PLAC IMPRISONMENT CERT
FEB 94
U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

To: Kym Worthy, Prosecuting Officer, Wayne County.

And to all other prosecuting officers and courts of jurisdiction listed below from which indictments, informations or complaints are pending, you are hereby notified that the undersigned is now imprisoned in:

Federal Correctional Institution at Beaver, West Virginia

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me: **1st Degree Murder**

Failure to take action in accordance with the Interstate Agreement on Detainers Act, to which your state is committed by Law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceedings contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Interstate Agreement on Detainers Act and a further consent voluntarily to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required certificate of Inmate Status and Offer of Temporary Custody, are attached.

Dated: March 2, 2005 Swafford, Kobeay 16706-075
(Inmate's Name and Number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings preliminary to trial in the receiving state which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the Inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____

whose address is _____
(Street, City, State, ZIP)

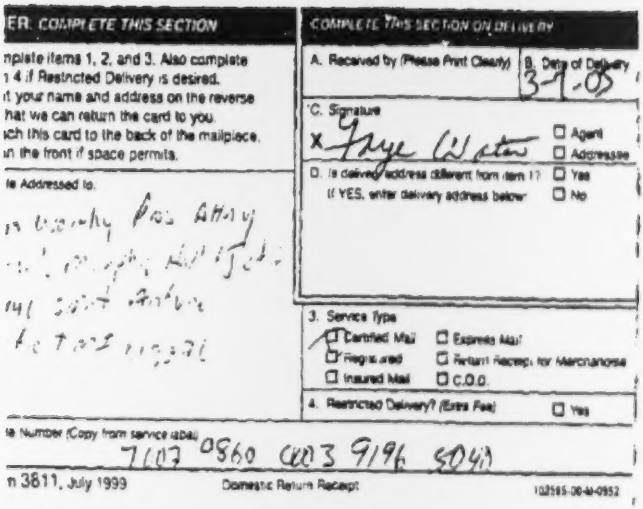
B. I request the court to appoint counsel.

Kobeay Swafford
(Inmate Signature)

Record Copy - State IAD Administrator; Copy: J&C File; Copy: Central File (Section 1), Copy - Prosecuting Official (Mail Certified Return Receipt), Copy - Clerk of Court (Mail Certified Return Receipt)
(This form may be reSeplicated via WP) (Replaces BP-236(58) OCT 88

Exhibit G

U.S. Mail Domestic Return Receipt from Wayne County Prosecutor's Office and Clerk of the Court, dated March 7, 2005



ER: COMPLETE THIS SECTION

nplete items 1, 2, and 3. Also complete
1 4 if Restricted Delivery is desired.
it your name and address on the reverse
hat we can return the card to you.
ach this card to the back of the mailpiece,
on the front if space permits.

le Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 3-7-05

C. Signature X Faye Waters ☐ Agent ☐ Addressee

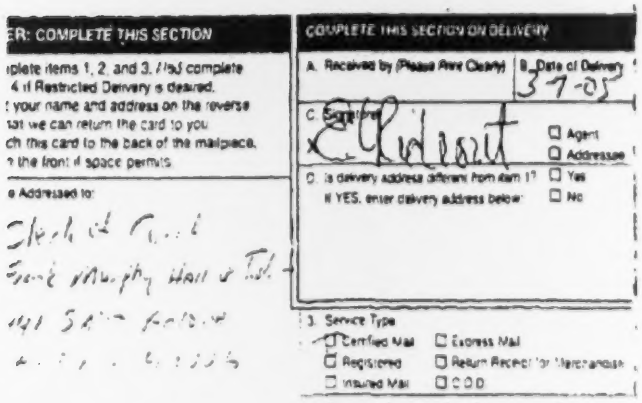
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

le Number (Copy from service label) 7107 0860 0003 9196 5043

n 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



ER: COMPLETE THIS SECTION

iplete items 1, 2, and 3. Also complete
4 if Restricted Delivery is desired.
your name and address on the reverse
hat we can return the card to you.
ch this card to the back of the mailpiece,
the front if space permits.

e Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 3-7-05

C. Signature X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

Exhibit H

Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated June 4, 2005

U. S. Department of Justice

Federal Bureau of Prisons

Federal Correctional Institution

P.O. Box 1280
Beaver, WV 25813

June 04, 2005

Kym Worthy, Prosecuting Attorney
Frank Murphy Hall of Justice
1441 Saint Antoine
Detroit, MI 48226

RE: Swafford, Kobeay #16706-075

Dear Ms. Worthy:

The above named inmate has requested disposition on outstanding charges which were filed against him as a detainer. The necessary forms under the Interstate Agreement on Detainers (IAD) were forwarded to your office via certified/return receipt requested mail.

Date Forms Mailed: 03-02-2005

Date Received by your Office: 03-07-2005

We have not yet received the following completed forms from you:

- "Evidence of Agents Authority to Act for Receiving State", Form VI
- "Prosecutor's Acceptance of Temporary Custody of an Offender in Connection with a Prisoner's Request for Disposition of a Detainer", Form VII
- Prosecutor's Certification

As you know, once an inmate requests disposition under the IAD they must be brought to trial within 180 days of your receipt of the request. Ninety of the allotted 180 days elapsed effective June 25, 2005.

If I may be of any assistance to you, please contact me at (304) 252-9758, ext. 4202.

Sincerely,

Michael J. Snow
Inmate Systems Manager

cc: Clerk of the Court,
Compact Administrator,
J&C File
Central File
Inmate

Exhibit I

IAD - Prosecutor's Certification,
dated June 15, 2005

BP-S565.051 IAD - *PROSECUTOR'S CERTIFICATION* CDFRM
FEB 94
U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

This is to certify that I, Kellie Gleason, Title, Assistant Prosecuting Attorney do hereby agree to the following conditions in connection with the request for custody of:

Swafford, Kobeay
(Inmate's Name)

Conditions

a. Agree to provide inmate with the level of security required by Bureau of Prisons' Policy.
b. Agree to report to the Bureau of Prisons, any problems associated with said inmate, to include disciplinary problems, medical emergencies, suicide attempt, escape or attempted escape or any other problem arising during commitment.
c. Agree not to release said inmate on bail or bond or to commit them to an institution for service of any sentence imposed in connection with our prosecution.
d. Agree to return said inmate to the federal institution from which they were obtained.
e. Agree to notify the local jail authority of the responsibility to return the inmate to federal custody.

As the Prosecuting Official for the State of Michigan,
I, Kellie Gleason, Title, Assistant Prosecuting Attorney hereby submit the following information in connection with my request for temporary custody of: : **Swafford, Kobeay**
Federal Register No. **16706-075**

Information

1. Name of jail facility where inmate will be confined during legal proceedings.
WAYNE COUNTY JAIL
525 CLINTON STREET DETROIT, MICHIGAN 48226

2. Name and phone number of the jail administrator. darryl fordham 313-224-0778

3. Scheduled date for trial. _____ 4. Proj. return date to federal custody: _____

5. Name and phone number of the state agency and the specific name of agent(s) who will transport the inmate to your jurisdiction. PTS OF AMERICA, LLC
P.O. BOX 121591 NASHVILLE, TN 37212 1-866-388-8488

6. Signature and Title of Prosecutor Kellie Gleason Date 6/15/05

Subscribed and sworn before (Date): 6/15/2005

Signature of Notary Public: Joyce Sharp Date 3/8/09

Record Copy - J & C File, Copy - Central File (This form may be replicated via WP)

Exhibit I-1

Evidence of Agent's Authority to Act for
Receiving State, Form VI, dated June 15, 2005

FORM VI

AGREEMENT ON DETAINERS

Five copies. All copies, with original signatures by the prosecutor and the agent, should be sent to the Administrator of their own state. After signing all copies, the Administrator should retain one for his/her files, send one to the warden/superintendent of the institution in which the prisoner is located and return two copies to the prosecutor who will give one to the agent for use in establishing his/her authority and place one in his/her files. One copy should also be forwarded to the Agreement Administrator in the sending state.

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

TO: Administrator for the State of Michigan
(Administrator of the Agreement on Detainers)

KOBEAY QURAN SWAFFORD (Inmate name and number) is confined in

FCI BECKLEY P.O. BOX 1280 BEAVER, WEST VIRGINIA 25813
(Institution) (Address)

and will be taken into custody at the institution on or about within statutory limits

for return to the County of WAYNE, State of MICHIGAN for trial.

In accordance with Article V(b), I have designated PTS OF AMERICA, LLC
whose signature appears below as agent to return the prisoner. (see attached list)

Dated: 6/15/05

Kellie Gleason RMIU
Kellie L. Gleason (Prosecuting Official)

Title APA Extradition Unit

County: Wayne

See attached list
(Agent's Signature)

Address: 1441 St. Antoine 10th Floor

City/State: Detroit, MI 48226

(Agent's Signature)

Telephone No.: 313-224-5809

TO: Warden/Superintendent

In accordance with the above representation and the provisions of the Agreement on Detainers, the persons listed above are hereby designated as Agents for the State of ~~Indiana~~ Michigan to return Kobeay Quran Swafford 16706-075 (Inmate's Name and Number) to the County of Wayne, State of Michigan for trial.

At the completion of the trial, Kobeay Quran Swafford 16706-075 (Inmate) shall be returned to the FCI BECKLEY BEAVER, WEST VIRGINIA 25813 (Institution and Address).

Dated: 6/20/05

Cheri Arwood (Agreement Administrator)

Agreement Coordinator: Cheri Arwood

Address: P.O. Box 3003

City/State: Lansing, MI 48909

Telephone No.: 517-335-6901

Exhibit I-2

Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer, Form VII, dated June 15, 2005

FORM VII

AGREEMENT ON DETAINERS

IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of a prisoner's request for disposition of a detainer. If the offer has been received because another prosecutor in your state has initiated the request, use Form VIII. Copies of Form VII should be sent to the warden/superintendent, the prisoner, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrator of both the sending and receiving states. Copies should be retained by the person filing the acceptance and the judge who signs it.

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

TO: WARDEN (Warden, Superintendent, Director) FCI BECKLEY (Institution)

FEDERAL CORRECTIONAL INSTITUTION (Address) P.O. BOX1280 BEAVER, WEST VA 25813

In response to your letter of March 2, 2005 (Date) and offer of temporary custody regarding ROBEAY QURAN SHAFFORD (Name of Prisoner) who is presently under indictment, information or complaint in the COUNTY OF WAYNE STATE OF MICHIGAN (Jurisdiction) of which I am ASSISTANT PROSECUTING ATTORNEY (Title of Prosecuting Officer), please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after the trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS [If your jurisdiction is the only one named in the offer to take temporary custody use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make an inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.]

Dated 6/15/05

Signed: Kellie Gibson PSI4K

Name/Title: ASSISTANT PROSECUTING ATTORNEY

Address: 1441 St. Antoine Room 1007

City/State: Detroit, Michigan 48226

Telephone No.: 313-224-5809

I [hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated 6/15/05

Signed: [signature]

Court: Circuit Court

Judicial District: Wayne County

Address: 1441 St. Antoine

City/State: Detroit, Michigan 48226

Telephone No.: 313-224-5170

Exhibit J

Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated September 16, 2005

U. S. Department of Justice

Federal Bureau of Prisons

Federal Correctional Institution

P.O. Box 1280
Beaver, WV 25813

September 16, 2005

Kym Worthy, Prosecuting Attorney
Frank murphy Hall of Justice
1441 Saint Antoine
Detroit, MI 48226

RE: Swafford, Kabeay 16706-075

Dear Ms. Worthy:

The above named inmate requested disposition of the outstanding charges that you have filed against him as a detainer on 03-02-2005. Under Article III of the Interstate Agreement on Detainers, an inmate must be brought to trial within 180 days after he requests disposition and the forms are received by the appropriate officials. Our records indicate the forms required under the provisions of the IAD were received and signed for by your office on 03-07-2005. Copies of the inmate's request for disposition were also sent to the Clerk of the Court and the Compact Administrator for your state. We have not been notified of any reasonable continuance granted by the Court in this matter and we have not been advised to remove the detainer.

Since 180 days have elapsed since you received this request for disposition, we have advised, by copy of this letter to the inmate, that he may petition the appropriate court for dismissal of the outstanding charges.

Sincerely,

D. Buchanan, Actg

Michael J. Snow
Inmate Systems Manager

cc: Clerk of the Court,
Compact Administrator,
J&C File
Central File
Inmate

Exhibit K

Federal Bureau of Prisons, Release
Authorization dated October 5, 2005

.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU OF PRISONS

Inmate Name	Register No.	Institution	Date
Swafford, Kobeay	16706-075	FCI BECKLEY, WV	10-05-2005

Release Date	Method	Detainer:
10-05-2005	IAD	☒ Yes ☐ No

Custody Will Be Taken by: ~~Transcore Inc.~~ List Attached.

CERTIFICATION: I certify that this release is in accordance with applicable and controlling rules, regulations, and statutory provisions, I have personally reviewed this inmate's Judgment and Commitment File and determined that there is no information that would prevent release by the method stated above. Both Judgment and Commitment Orders, U.S. Parole Commission Warrants, Notice of Actions, Good Time Documents, and all detainer information have been personally reviewed by me.

Name/Title	Signature	Date
DEBRA L. BUCHANAN, ACTING INMATE SYSTEMS MANAGER	D. Buchanan	10-5-05

INMATE MUST BE RETURNED TO
F.C.I./F.P.C.
BECKLEY, Beaver WV
IS NOT TO BE RELEASED FROM CUSTODY WITHOUT THE WRITTEN PERMISSION OF THE WARDEN.

Thumbprint

Last Name: SWAFFORD
First Name: KOBEAY
Middle Name: QURAN
Age: 5' 7" Weight: 185
Sex: BLK Race: BRO
Reg No: 16706-075 BEC

DESTINATION ADDRESS:
Wayne County Jail
25 Clinton Street
Detroit, MI 48226

RELEASE ACTION

Identified by:	Released by:
FBI	ISO

Funds Paid by:	Date of Release:	Time of Release:
	10-5-2005	9:10 AM

RECEIPT OF AGENT TAKING CUSTODY

I have received the above named prisoner, together with personal property and funds in the amount of $ -0-

Name/Title	Signature	Date
[illegible] USM	[illegible]	10-5-05

Location Detroit MI - Fed. Pursuant

Record Copy - Receiving & Discharge File in Judgment & Commitment File, Copy - Case Management, Central File Section 3); Copy - Control Room; Copy - Hospital, Copy - Transporting Officer

This form may be replicated via WP) Replaces BP-S32(58) of OCT 93

NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

PROOF OF SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

CRAIG A. DALY, being first duly sworn, deposes and says that on the 5th day of May 2008, he did serve one (1) copy of the following:

1. Appearance;
2. Motion for Leave to Proceed *In Forma Pauperis*;
3. Affidavit in Support of Motion for Leave to Proceed *In Forma Pauperis*;
4. Brief in Opposition to Petition for Writ of Certiorari;
5. Proof of Service

upon Timothy Baughman, Wayne County Prosecutor's Office, Appellate Division, 1441 St. Antoine, 12th Floor, Detroit, Michigan 48226 by first class mail.

CRAIG A. DALY, P.C. (P27539)

Subscribed and sworn to before me
this 5th day of May 2009.

Melinda D. Zawal

Melinda D. Zawal, Notary Public
State of Michigan, County of Macomb
My Commission Expires 6/18/2010
Acting in the County of Wayne